

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KENNETH H. TIBBETTS,

Petitioner,

v.

DISTRICT COURT OF BECKHAM  
COUNTY,

Respondent.

MA 2023 196  
Case No \_\_\_\_\_

FILED  
COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

MAR 10 2023

JOHN D. HADDEN  
CLERK

PETITION FOR A WRIT OF MANDAMUS

COMES NOW the Petitioner, KENNETH H. TIBBETTS, and moves this Court of a writ of mandamus pursuant to *Title 12, Oklahoma Statutes, Section 1451, et seq.*, directing the District Court of Beckham County to entertain and act upon Petitioner's *Application for Post-Conviction Relief*, as styled in *Tibbetts v. State, CF-23015-188*.

In further support thereof, Petitioner would show this Court the following:

I. CLEAR LEGAL RIGHT TO RELIEF SOUGHT:

Oklahoma's Post-Conviction Procedure Act, as codified in *Title 22, Oklahoma Statutes, Sections 1080 through 1087, et seq.*, provides a statutory remedy for *any* person, who has been convicted, or sentenced, for a crime to seek relief from such unlawful conviction or sentence.

On May 16, 2018, Petitioner filed his first application seeking post-conviction relief, in which he raised the following claims:

- PROPOSITION I: THE WAIVER DOCTRINE FOUND IN 22 O.S. §1086 DOES NOT APPLY TO FUNDAMENTAL CONSTITUTIONAL CLAIMS.
- PROPOSITION II: PETITIONER WAS DENIED CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL DUE TO AN ACTUAL CONFLICT OF INTEREST WITH HIS RETAINED COUNSEL OF RECORD.

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PROPOSITION III: THE DISTRICT COURT OF BECKHAM COUNTY WAS WITHOUT SUBJECT-MATTER JURISDICTION TO PROSECUTE PETITIONER.

PROPOSITION IV: PETITIONER WAS DENIED CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL DUE TO THE DEFICIENT PERFORMANCE OF HIS ATTORNEY AND THE RESULTING PREJUDICE PETITIONER SUFFERED, WHICH WAS THE PROXIMATE RESULT OF CONFLICTING INTERESTS.

PROPOSITION V: PETITIONER WAS DENIED CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

On December 19, 2018, the State filed its answer to Petitioner's application. In light of unrelated litigation regarding the sovereignty of "Indian lands", and those persons prosecuted therein, Petitioner's post-conviction action was apparently stayed by the District Court, though no such order appears in the OSCN Case Details. (See **Exhibit A**)

It is now evident, more than four (4) years later, that the District Court of Beckham County has dropped the ball in Petitioner's case, by failing to adjudicate his post-conviction application.

## **II. PLAIN LEGAL DUTY OF RESPONDENT:**

The duty of Respondent is found in 22 *O.S. §1083* and *§1084* of Oklahoma's Post-Conviction Procedure Act. *§1083* specifically imposes a duty upon the district court to adjudicate the post-conviction application, based upon the facts presented. And, where a material issue of fact remains, *§1084* mandates that the district court conduct an evidentiary hearing.

In this case, Petitioner contends that material issues of fact are evident, and there is a necessity, in the interests of justice, that the district court conduct an evidentiary hearing to dispose of such facts. The record in this case is insufficient to establish appropriate finding of facts and conclusions of law.

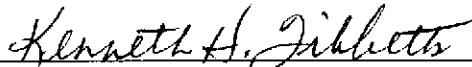
**III. ADEQUACY OF MANDAMUS -- UNAVAILABILITY OF OTHER RELIEF:**

Mandamus is the only remedy known to Petitioner to compel the performance of the Court to act upon his *Application for Post-Conviction Relief*. In light of Petitioner's "*clear legal right*" and the Respondent's "*plain legal duty*", mandamus is both adequate and appropriate.

**CONCLUSION**

WHEREFORE, premises considered, Petitioner would ask this Court to direct Respondent to respect the spirit of **Article II, Section 6**, of the Oklahoma Constitution, as well as the **Fourteenth (14th) Amendment** to the United States Constitution, and provide him the necessary court access in Beckham County to adjudicate his meritorious claims of state and federal constitutional violation that entitles him to relief.

Respectfully submitted,

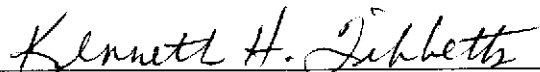
  
Kenneth H. Tibbetts, Petitioner  
#122414 (JHCC)  
P.O. Box 548  
Lexington, OK. 73051

**CERTIFICATE OF SERVICE**

I, Kenneth H. Tibbetts, do hereby certify under the penalty of perjury, that I mailed true and correct copies of the foregoing Petition for a Writ of Mandamus to the below-named officials, on this the 27<sup>th</sup> day of February, 2023:

Leasa Hartman, Court Clerk  
District Court of Beckham County  
104 S. 3<sup>rd</sup> St.  
Sayre, OK. 73662

Clerk of the Appellate Courts  
2100 N. Lincoln Blvd., Ste. 4  
Oklahoma City, OK 73105

  
Kenneth H. Tibbetts, Petitioner



## OKLAHOMA State Courts Network

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### IN THE DISTRICT COURT IN AND FOR BECKHAM COUNTY, OKLAHOMA

No. CF-2015-00188

(Criminal Felony)

STATE OF OKLAHOMA V. KENNETH HAROLD TIBBETTS Filed: 05/26/2015

Judge: HAUGHT, HONORABLE DOUG

## PARTIES

TIBBETTS, KENNETH HAROLD, Defendant  
ELK CITY POLICE DEPARTMENT, ARRESTING AGENCY  
COOK, JOHN #2, ARRESTING OFFICER

## ATTORNEYS

### Attorney

MARSEE, MS. ANGELA C.  
DISTRICT ATTORNEY  
P. O. BOX 36  
ARAPAHO , OK 73620

YOHN, MR. RICHARD  
PO BOX 1494  
CLINTON , OK 73601

### Represented Parties

## EVENTS

Event	Party	Docket	Reporter
Tuesday, June 9, 2015 at 1:30PM ATTORNEY DATE			
Thursday, July 30, 2015 at 9:00AM BOND HEARING			
Tuesday, September 1, 2015 at 9:00AM PRELIMINARY HEARING			

*EXHIBIT A*

**07-07-2016 [ TEXT ]**

TRANSCRIPT OF PROCEEDINGS JUDGMENT AND SENTENCE

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

HAD ON THE 30TH DAY OF MARCH, 2016 BEFORE THE HONORABLE

DOUG HAUGHT DISTRICT JUDGE.

**07-07-2016 [ TEXT ]**

CONT'D

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

**07-13-2016 [ TEXT ]**

JUDGMENT AND SENTENCE ISSUED

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

**07-15-2016 [ TEXT ]**

JUDGMENT AND SENTENCE RETURNED

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

**07-21-2016 [ TEXT ]**

NOTICE OF COMPLETION OF RECORD FOR APPEALS FROM

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

DISTRICT COURT

**07-25-2016 [ TEXT ]**

REQUEST TO TRANSMIT APPEAL RECORDS

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

**07-25-2016 [ TEXT ]**

\$ 200.00

PREPARING AND TRANSMITTING CF/CM RECORD ON APPEAL

(NON-JURY TRIAL)

**07-25-2016 [ TEXT ]**

CERTIFICATE OF MAILING

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

**07-06-2017 [ TEXT ]**

\$ 10.00

OTC: WARRENT INTERCEPT MAILED TO OTC

**09-15-2017 [ TEXT ]**

SUMMARY OPINION DENYING CERTIORARI

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

**09-15-2017 [ TEXT ]**

MANDATE

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

**05-16-2018 [ TEXT ]**

APPLICATION FOR POST-CONVICTION RELIEF

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

**12-19-2018 [ TEXT ]**

STATE'S ANSWER TO PETITIONER'S APPLICATION FOR POST

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

CONVICTION RELIEF



**SUPREME COURT OF OKLAHOMA  
CLERK OF THE APPELLATE COURTS**

John D. Hadden

March 2, 2023

Kenneth Tibbetts #122414  
JHCC  
P.O. Box 548  
Lexington, OK 73051

Dear Mr. Tibbetts:

Receipt of the Petition in Error, for filing with the Court of Criminal Appeals, is hereby acknowledged, however the Petition cannot be filed at this time.

The Rules of the Court of Criminal Appeals provide that each Petition must be accompanied by the filing fee of \$50.00 or a completed Affidavit in Forma Pauperis, before an appeal number shall be assigned. Upon receipt of the Petition, I did not locate either the filing fee or affidavit. I am enclosing a sample affidavit for your information and I will retain the Petition pending timely receipt of the filing fee or affidavit.

Please be advised that this does not extend your filing deadline. If you do not provide a completed affidavit or required filing fees by your filing deadline, your Petition may be considered out of time and dismissed. Due to the fact the payment of filing fees is based upon the cost for filing documents with this Court, any filing fees submitted on Petition that are determined by the Court to be out of time will not be refunded.

If this office can be of further assistance, please contact us.

Sincerely,

A handwritten signature in black ink that reads "Candace Duncan". The signature is fluid and cursive, with the first name "Candace" being more prominent.

Candace Duncan  
Deputy Clerk

# OCCAOnline Rules of the Court of Criminal Appeals

## Form 13.2 Affidavit in Forma Pauperis

The Affidavit in Forma Pauperis must be in the following form:

I, Kenneth H. Tibbetts, state that I am a poor person without funds or property or relatives willing to assist me in paying for filing the within instrument. I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Signed this 7<sup>th</sup> day of March, 2023 at Lexington, Cleveland, Oklahoma.  
(Print City, County, & State)

Kenneth H. Tibbetts  
(Signature of Affiant)

Kenneth H. Tibbetts  
(Print Name)

RECEIVED  
MAR 10 2023  
CLERK OF THE  
APPELLATE COURTS